

AROOSTOOK MICMAC COUNCIL, INC.  
v.  
EASTERN AREA DIRECTOR, BUREAU OF INDIAN AFFAIRS

IBIA 89-28-A

Decided July 11, 1989

Appeal from a decision of the Eastern Area Director, Bureau of Indian Affairs, rejecting an application by the Aroostook Micmac Council, Inc., for a grant under the Indian Child Welfare Act for FY 1989.

Reversed and remanded.

1. Indians: Indian Child Welfare Act of 1978: Financial Grant  
Applications: Generally--Indians: Federal Recognition of Indian  
Tribes: Generally

Only Federally recognized Indian tribes qualify as tribal applicants for grants under Title II of the Indian Child Welfare Act, 25 U.S.C. §§ 1931-1934 (1982).

2. Indians: Indian Child Welfare Act of 1978: Financial Grant  
Applications: Generally

A state-recognized Indian tribe may apply for a grant under Title II of the Indian Child Welfare Act, 25 U.S.C. §§ 1931-1934 (1982), if it qualifies as an off-reservation Indian organization.

3. Indians: Indian Child Welfare Act of 1978: Financial Grant  
Applications: Generally

In implementing a grant awarded under Title II of the Indian Child Welfare Act, 25 U.S.C. §§ 1931-1934 (1982), an off-reservation Indian organization may limit its service population to its own members.

APPEARANCES: Nan Heald, Esq., Augusta, Maine, for appellant.

OPINION BY ADMINISTRATIVE JUDGE VOGT

Appellant Aroostook Micmac Council, Inc., challenges a February 27, 1989, decision of the Eastern Area Director, Bureau of Indian Affairs (appellee; BIA), rejecting its application for a grant under Title II of

the Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1931-1934 (1982), 1/ for FY 1989. For the reasons discussed below, the Board reverses that decision and remands this case to appellee for further proceedings.

### Background

Appellant is a non-profit corporation which represents the Aroostook Band of Micmacs, a non-Federally recognized Indian tribe, most of whose members live in Aroostook County, Maine. 2/ On February 16, 1989, appellant submitted an application for an ICWA grant for \$50,000 for the period June 1, 1989, to May 31, 1990. In its application, appellant described itself as an off-reservation Indian organization. It identified its proposed service area as Presque Isle and Aroostook County, Maine. Its proposed program was described thus: "A Child and Family Services Program for the preservation of Micmac Indian families & the tribe. Goals are to keep families together, to prevent the removal of children, and to keep the Aroostook Band of Micmacs together by assisting in the development of Indian [sic] and in the reunification of families."

By letter of February 27, 1989, appellee notified appellant that its application could not be considered. The letter stated, "You have submitted an application as an off-reservation Indian organization to serve Micmacs exclusively, thereby relinquishing your application as an off-reservation Indian organization to that of a tribal applicant." Appellee held that appellant could not be considered as a tribal applicant because it was not a Federally recognized tribe, and could not be considered as an off-reservation Indian organization because it proposed to limit its services to the members of one tribe. Appellee concluded that an off-reservation Indian organization which received ICWA grant funds was required to serve all eligible Indians in its service area.

Appellant's notice of appeal from appellee's decision was received by the Board on March 30, 1989. The appeal was docketed on April 19, 1989, pursuant to 43 CFR 4.336 (54 FR 6488, Feb. 10, 1989). 3/ Appellant filed a statement of reasons with its notice of appeal and elected not to file a further brief with the Board. Appellee did not file a brief. 4/

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1/ All further references to the United States Code are to the 1982 edition.

2/ The term "appellant" as used in this opinion refers to either the Aroostook Micmac Council, Inc., or the Aroostook Band of Micmacs, as appropriate in context.

3/ Under the Board's new procedures, an appeal is assigned a docket number 20 days after it is received, unless the Board has been properly notified by the Assistant Secretary - Indian Affairs that he has assumed jurisdiction over the appeal.

4/ Appellee did submit, however, a substantive statement in support of his decision at the time he submitted the administrative record. The Board sent a copy of this statement to appellant.

### Discussion and Conclusions

Appellant argues that (1) it meets the eligibility requirements for ICWA grant funds because it is the governing body of a nonprofit off-reservation Indian organization, (2) it properly submitted its application as an off-reservation Indian organization rather than a tribe, (3) it properly restricted its proposed service population to the "unduplicated client service population directly benefiting from the project," because Micmacs are the only Indian population of Aroostook County not currently served under ICWA grants, and (4) it properly restricted its proposed service area to Aroostook County, which is the only area it realistically could serve. Appellant contends that its service population is limited by historical fact and present geographic considerations to the members of a particular tribe.

Section 201 of ICWA, 25 U.S.C. § 1931, authorizes the Secretary of the Interior to "make grants to Indian tribes and organizations in the establishment and operation of Indian child and family service programs on or near Indian reservations and in the preparation of child welfare codes." The section lists a number of services which are authorized to be provided by such programs.

Section 202, 25 U.S.C. § 1932, provides:

The Secretary is also authorized to make grants to Indian organizations to establish and operate off-reservation Indian child and family service programs which may include, but are not limited to--

(1) a system for regulating, maintaining, and supporting Indian foster adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate State standards of support for maintenance and medical needs;

(2) the operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children;

(3) family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities, and respite care; and

(4) guidance, legal representation, and advice to Indian families involved in child custody proceedings.

Regulations implementing ICWA are found at 25 CFR Part 23. 25 CFR 23.21(a) provides that applications for grants may be made by "[t]he governing body of any tribe or tribes, or any off-reservation Indian

organization, [5/] or any multi-service Indian center located off-reservation or in an area designated by the Commissioner as 'near' reservation." 25 CFR 23.2(h) defines "Indian organization" as "any group, association, partnership, corporation or other legal entity owned or controlled by Indians, or a majority of whose members are Indians." The term "Indian" has three definitions. For purposes of this appeal, the most relevant definition is found at 25 CFR 23.2(d)(3):

Service eligibility for off-reservation Children and Family Service Programs: For the purpose of Indian child and family programs under section 202 of the Indian Child Welfare Act (92 Stat. 3073) any person who is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the state in which they reside, or who is a descendant, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary of Health, Education, and Welfare. Membership status is to be determined by the tribal law, ordinance, or custom.

[1] As a threshold matter, the Board holds that appellee correctly concluded that appellant did not qualify as a tribal applicant for an ICWA grant. 6/ Appellant did not purport to apply as a tribe, however. The real questions here are whether appellant is entitled to apply as an "off-reservation Indian organization" and, if so, whether it may limit its services to its own members.

[2] Appellant is a state-recognized tribal group. 7/ Its members therefore come within the definition of "Indian" in 25 CFR 23.2(d)(3) and

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5/ 25 CFR 23.26(b) provides:

"The Bureau shall only make a grant under this part for an off-reservation program when officially requested to do so by the governing body of an off-reservation Indian organization."

6/ 25 CFR 23.2(i) defines "Indian tribe" as:

" [A]ny Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended."

This definition clearly refers to Federally recognized tribes. See, e.g., Northwest Computer Supply v. Acting Deputy to the Assistant Secretary--Indian Affairs (Operations), 16 IBIA 125 (1988).

7/ Appellant so states. Appellee does not directly dispute this statement. However, in his memorandum transmitting the administrative record, appellee appears to imply some doubt, stating that appellant "claim[s] to be a state recognized tribe." The accuracy of appellant's statement should be easily verifiable on remand. For purposes of this decision, the Board assumes that appellant's statement is accurate.

are eligible for off-reservation services authorized by section 202 of ICWA. Since appellant's members are "Indians," appellant comes within the definition of "Indian organization" in 25 CFR 23.2(h). Inasmuch as appellant is not located on an Indian reservation, it is, clearly, an "off-reservation Indian organization." The Board concludes that, under 25 CFR 23.21(a), appellant is entitled to apply for an ICWA grant as an off-reservation Indian organization.

[3] The next question is whether, as an off-reservation Indian organization, appellant is entitled to limit its services to its own members. Appellee held that it could not so limit its service population but was required to serve all eligible Indians in its service area. As support for this requirement, appellee cites 25 CFR 23.2(n) and page 2 of the FY 89 ICWA grant application kit. <sup>8/</sup> 25 CFR 23.2(n) defines "multi-service Indian center." <sup>9/</sup> It has no apparent relevance to appellant, which did not apply as such an entity.

The Board can find no provision of the statute or regulations that prohibits an off-reservation Indian organization from limiting its service population to its own members. Further, the definition of "Indian organization" at 25 CFR 23.2(h) clearly describes private entities, which might well be expected to serve only their own members. The Board holds that appellant may limit its service population to its own members.

In his memorandum transmitting the administrative record, appellee raises other issues that were not addressed in his February 27 decision. Appellee indicates that appellee's proposed service population may duplicate the service population of the Houlton Band of Maliseet Indians in the same geographic area. He also indicates that some of the services proposed to be provided by appellant may not be services which an off-reservation Indian organization is authorized to provide.

The Board does not address these issues because they were not addressed in appellee's decision. However, the Board has previously addressed the issue of duplication of service population. For whatever guidance it may afford on remand, the parties are referred to the Board's decision in Seattle Indian Center v. Acting Deputy Assistant Secretary--Indian Affairs (Operations), 12 IBIA 67, 90 I.D. 515 (1983).

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<sup>8/</sup> No copy of this kit is included in the administrative record.

<sup>9/</sup> 25 CFR 23.2(n) provides:

"Multi-service Indian center means an off-reservation social service center having an established social service delivery program; or, if located in an officially designated 'near' reservation area, a social service center serving a clientele of varied tribal affiliations, but with no more than one-half of its clientele from the tribe which requested designation of the 'near' reservation area."

This definition describes the third of the three categories of eligible applicants under 25 CFR 23.21(a).

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the February 27, 1989, decision of the Eastern Area Director is reversed, and this case is remanded to him for further proceedings.

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Anita Vogt  
Administrative Judge

I concur:

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Kathryn A. Lynn  
Chief Administrative Judge